



Comptroller General
of the United States

Washington, D.C. 20548

Spiegel

Decision

Matter of: Allied Production Management Co., Inc.
File: B-235686
Date: September 29, 1989

DIGEST

Low bid was properly rejected on the basis that individual bid bond surety was nonresponsible where the contracting officer had a reasonable basis to question the accuracy and sufficiency of the surety's evidence of financial acceptability and net worth.

DECISION

Allied Production Management Co., Inc., protests the rejection of its low bid under invitation for bids (IFB) No. FO4666-89-B0018, issued by the United States Air Force, for repairing and reroofing military housing units at Beale Air Force base. The Air Force determined that Allied's bid was unacceptable because its individual bid bond sureties were nonresponsible.

We deny the protest.

Bids were opened on April 25, 1989, and Allied submitted the lowest of the five bids received. The solicitation required bidders to submit the lesser of \$3 million or 20 percent of the total bid price as a guarantee. Allied submitted a bid bond guaranteed by two individual sureties. Each of the two individual bid bond sureties also completed a standard form (SF) 28 (Affidavit of Individual Surety). The Air Force conducted a routine investigation of the low bidder after bid opening, which revealed that Richard Rowan, one of Allied's sureties, had neglected to indicate an increase in the penal amount of a bond on which he was a surety under a current Navy contract. In addition, the contracting officer was concerned that the assets listed by both sureties were insufficiently documented and, in numerous instances, of questionable ownership and value. By letter dated May 18, the contracting officer rejected Allied's bid stating that it was nonresponsive because of an inadequate bid bond. On May 23, Allied protested the contracting officer's decision to the agency. Subsequent examination by the Air Force

046597/139630

revealed that Rowan's SF 28 contained a notarization irregularity, that the other surety's SF 28 bore a photocopied certification signature, and that both surety affidavits contained a discrepancy regarding the solicitation number. These irregularities raised further doubts about the accuracy of the sureties' affidavits and Allied's bid was ultimately rejected by the Air Force.

Allied contends that its bid was first erroneously rejected as nonresponsive, and then it was improperly determined to be nonresponsible. Allied disputes the Air Force's conclusions with respect to the assets of the sureties, and the purported discrepancies and irregularities in the affidavits. The protester argues that the net worth of each surety exceeds the solicitation requirement, that the inconsistencies in the affidavits were inadvertent and immaterial, and that closer scrutiny will confirm the authenticity of both affidavits.

As the Air Force concedes, the bid bond was properly executed, therefore the contracting officer incorrectly indicated that he was rejecting the bid as nonresponsive, rather than on the basis of Allied's nonresponsibility. However, this fact has no bearing on the merits of the protest since a valid basis for rejecting Allied's bid existed at the time of its rejection, and the May 18 letter outlined the contracting officer's concerns which provided the basis for rejecting Allied's bid. See Jerry Eaton, Inc., B-233458, Jan. 24, 1989, 89-1 CPD ¶ 71.

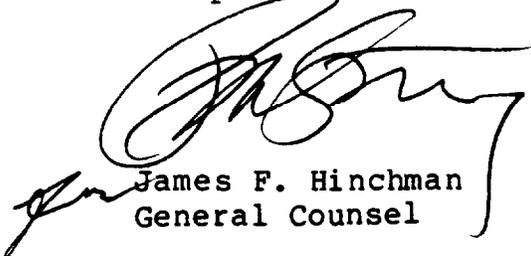
The accuracy and sufficiency of the information in the SF 28 to establish the sureties' financial acceptability is a matter of responsibility which may be based upon information submitted prior to award, and no award may be made without an affirmative determination of responsibility. Cascade Leasing, Inc., B-231848.2, Jan. 10, 1989, 89-1 CPD ¶ 20. Contracting officers are vested with a wide range of discretion and business judgment when reviewing the responsibility of bidders, and our Office will defer to their determinations unless the protester can demonstrate that those decisions were made in bad faith or without any reasonable bases. See Enclave One, Inc.; Ward Jones Constr. Co., B-232383, Nov. 17, 1988, 88-2 CPD ¶ 488. Here, the record reflects a reasonable basis for the nonresponsibility determination.

The contracting officer was concerned that a significant percentage of the assets listed by Rowan consisted of notes receivable, primarily from individuals, and of interests in limited partnerships not solely owned by the surety.

Further, the bank accounts listed appeared to be business accounts with significantly fluctuating balances. In addition, Rowan's accountant stated that Rowan's unaudited statement contained a departure from generally accepted accounting principles regarding estimated possible income tax liability associated with listed assets, the effect of which had not been determined. The contracting officer's resulting doubts concerning the acceptability of this surety's financial statement were exacerbated by the fact that Rowan's SF 28 contained irregularities consisting of a notarization executed prior to the date of issuance of the instant IFB on a form which nevertheless references the current IFB number, but which also contains an annotation with the number of an unrelated Army solicitation. The effect of these irregularities indicated possible alteration of the affidavit after certification and notarization.

In our view, these procedural irregularities were properly viewed by the contracting officer as amplifying and reinforcing his concerns about the accuracy and adequacy of the financial information supplied on the SF 28 by this surety. We find that the cumulative effect of the combination of the questionable value, nature and accessibility of the assets listed by Rowan, coupled with the manner in which his SF 28 was executed provided the contracting officer with a reasonable basis to question the accuracy and sufficiency of the surety's financial representation's and, therefore, to make a nonresponsibility determination. See Carson & Smith Constr., Inc., B-232537, Dec. 5, 1988, 88-2 CPD ¶ 560.

The protest is denied.



James F. Hinchman
General Counsel